BRB No. 02-0574 BLA

RONALD F. ELLISON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DEL RIO, INCORPORATED	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of John C. Holmes, Administrative Law Judge, United States Department of Labor.

John E. Anderson (Cole, Cole & Anderson, P.S.C.), Barbourville, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark, P.S.C.), Hazard, Kentucky, for employer.

Timothy S. Williams (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (01-BLA-0826) of Administrative Law Judge John C. Holmes awarding benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et*

seq. (the Act).[1] Based on the filing date of June 4, 1999, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge credited claimant with twenty-two years of coal mine employment and found employer to be the responsible operator. On the merits, the administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(1), (4), 718.203(b), and sufficient to demonstrate the presence of a totally disabling respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in failing to consider all the relevant evidence of record on the issues of the existence of coal worker's pneumoconiosis, disability and causation. Claimant responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), responds, also urging affirmance.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Employer first asserts that the administrative law judge failed to comply with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), when he found the existence of pneumoconiosis established based on the positive x-ray evidence without addressing questions raised by physicians concerning other disease processes which may have caused the radiographic abnormalities seen on the x-rays.

In finding that the x-ray evidence established the existence of pneumoconiosis, the administrative law judge discussed the readings of physicians who questioned whether the radiographic changes seen on x-ray were the result of disease processes other than pneumoconiosis. He noted that Drs. Wheeler and Scott consistently found the x-rays to be more compatible with healed tuberculosis and Dr. Wiot believed that metastatic disease was more likely the cause of the lesions and nodules seen on claimant's x-ray. Nonetheless, the administrative law judge concluded that these doctors did not rule out the existence of pneumoconiosis. The administrative law judge, therefore, concluded, in light of the other, overwhelmingly positive x-ray interpretations, that the x-ray evidence in this case established the existence of pneumoconiosis. This was rational. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *see also Cranor v. Peabody Coal Co.*, 22 BLR 1-1 (1999)(*en banc*); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).[2] Accordingly, we affirm the administrative law judge's finding that the existence of pneumoconiosis was established by x-ray evidence.

Employer next asserts that the administrative law judge violated the APA by failing to discuss sufficiently the evidence and explain his findings regarding the issue of total disability. We disagree. Although alleging that the administrative law judge failed to sufficiently discuss the evidence and explain his findings on total disability, employer has failed to specify which items of evidence the administrative law judge failed to address. Further, contrary to employer's allegation, the administrative law judge did state his reasons for crediting and discrediting the evidence. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-

[2] Because we affirm the administrative law judge's finding that the existence of pneumoconiosis was established at 20 C.F.R. §718.202(a)(1) by x-ray evidence, we will not address employer's argument concerning the administrative law judge's weighing of the medical opinion evidence at 20 C.F.R. §718.202(a)(4). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

149 (1989)(*en banc*); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-236 (1987). Without an allegation of specific error by the administrative law judge, the Board has no basis to review the administrative law judge's findings. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Accordingly, as employer has not alleged specific error with respect to the administrative law judge's finding that total disability was established, that finding must be affirmed. *See Cox*, *supra*; *Fish*, *supra*; *see also Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Finally, employer argues that the administrative law judge erred in not crediting the opinions of Drs. Jarboe and Broudy on the issue of disability causation and crediting instead less reliable opinions to find disability causation established. In response, the Director contends that employer failed to substantiate its assertion that the opinions of Drs. Westerfield, Sargent, Burki, and Sherman, on which the administrative law judge relied, were unreasoned. The Director contends that the administrative law judge's acknowledgment that these opinions were not perfect did not in and of itself make them unreasoned. Rather, the Director contends that the administrative law judge rationally relied on the reasoned opinions of Drs. Sargent and Sherman that claimant's coal mine employment was a material cause of claimant's disability and on the opinions of Drs. Westerfield and Burki which, while not fully explained, nonetheless were in accord with the objective medical evidence as well as the opinions of Drs. Sargent and Sherman. Further, the Director states that even though the administrative law judge found that the opinions of Drs. Jarboe and Broudy were reasoned, the administrative law judge nonetheless properly rejected their opinions because they were based on the physicians' belief that they had to choose between smoking and coal mine employment as the cause of claimant's disability rather than determining whether claimant's coal dust exposure played any material role in claimant's disability. The Director further notes that all the other physicians, except Dr. Dahhan, acknowledged that coal dust exposure, as well as cigarette smoking contributed to claimant's disability. The Director correctly contends that the administrative law judge did not err in failing to address Dr. Dahhan's opinion on disability causation since Dr. Dahhan found that claimant was not totally disabled and did not have pneumoconiosis.

We agree with the Director. While acknowledging that the opinions of Drs. Westerfield, Sargent, Burki, and Sherman were far from perfect, the administrative law judge nonetheless, citing the regulation at Section 718.204(c), found that they were sufficient to establish disability causation. 20 C.F.R. §718.204(c). In addressing the opinions of Drs. Jarboe and Broudy that smoking, not coal mine employment, was the cause of claimant's disability, the administrative law judge rejected their opinions because they were based on generalizations which were inconsistent with the regulatory definition of pneumoconiosis and because they failed to refute the effects of claimant's history of coal dust exposure. *See Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 340-341, 20 BLR 2-246 (4th Cir. 1996) *citing Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719, 18 BLR 2-16 (4th Cir. 1993); *Knizner v. Bethlehem Coal Co.*, 8 BLR 1-5 (1985); *see also Kozele v. Rochester & Pittsburgh Coal Co.*,

6 BLR 1-378, 382 n.4 (1983). The administrative law judge, therefore, properly concluded that disability causation was established based on the medical opinion evidence. *See* 20 C.F.R. §718.204(c).

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge